IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1217 OF 2006

Yeola Nagar Parihad .... Petitioner
V/s
Navinchandra Rasiklal Patel & Ors..... ..... Respondents.

Mr.S.S.Kulkarni, Adv. for the petitioner.

Mr.S.M.Dharap for Mrs.Anjali Helekar, Adv. For respondent No.1.

Mr.S.K.Chincholikar, AGP for respondent No.3.

CORAM: A.P. DESHPANDE, J.
27.4.2007

PC:

Rule.

Rule made returnable forthwith. Taken up for hearing by consent of parties.

Yeola Municipal Council has filed this writ petition taking exception to an interlocutory order passed by the Industrial Court below Exh.U-2 which in turn restrains the present petitioner from implementing the order dated 3.2.2005 pending decision of the complaint. The order dated 3.2.2005 reveals that the respondent was granted ad-hoc promotion to the post of Recovery Superintendent though he was not qualified and eligible for the same, as he did not have the qualification of having passed L.S.G.D. It is further revealed from the said order that the proposal sent by the Municipal Council to the Director of Municipal Administration seeking exemption to the qualification of the respondent came to be rejected. Thus, by the said order the respondent was directed to be reverted to his substantial post and a further direction is issued to recover the amount of difference of wages. The order dated 3.2.2005 was challenged by filing complaint before the Industrial Court and the Industrial Court has passed interim order therein.

2. Perusal of the appointment order (promotion order) dated 1.2.1992 reveals that

the respondent has been promoted on the vacant post of Recovery Superintendent in a given pay scale by promotion. The appointment order further says that the promotion is subject to compliance of Standing Committee' sresolution dated 27.1.1992. It was resolved by the Standing Committee while appointing the respondent by granting him promotion that the respondent does not possess L.S.G.D. Qualification and hence the promotion was granted subject to condition that the respondent acquires said qualification within a period of two years. Till date the respondent has not acquired the said qualification. It is thus clear that the respondent does not hold eligibility qualification for being promoted to the post of Recovery Superintendent. Though the appointment order itself makes the appointment by promotion conditional and though the condition of acquiring requisite qualification has not been satisfied the Industrial Court granted interim relief in the nature of restraining the petitioner from reverting the respondent to his substantial post. Perused the order. Same is wholly unsustainable in law. Merely because the respondent is continued in service in the promotional post though not eligible for a period of about 10 years, the same does not arm the respondent with a right to continue in the post when the promotion itself was granted subject to the respondent acquiring necessary qualification. In this view of the matter the impugned order dated 6.5.2005 passed by the Industrial Courts needs to be modified. Needless to mention that the impugned order suffers from patent illegality requiring interference in exercise of writ jurisdiction. However as the respondent was continued by the present petitioner in the promotional post from the year 1992 till 3.2.2005 and thus prima facie it can be said that the petitioner cannot make any recovery. Thus the order dated 3.2.2005 to the extent it directs making recovery with effect from 1.2.1995 onwards deserves to be stayed. In the result the impugned order passed by the Industrial Court stands modified. The petitioner is directed not to implement the order dated 3.2.2005 to the extent it directs recovery of difference of wages from 1.2.1995 onwards. However, the other part of the order directing reversion of the respondent may be implemented. Rule made absolute in above terms with no order as to costs.

27.4.07.